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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/030,989	02/26/1998	RICHARD A. NAZARIAN	28724/34520	8085

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[REDACTED] EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT	PAPER NUMBER
2635	[REDACTED]

DATE MAILED: 09/06/2002

*JG*

Please find below and/or attached an Office communication concerning this application or proceeding.

*AC*

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/030,989	NAZARIAN ET AL. <i>NB</i>
	Examiner	Art Unit
	Brian A Zimmerman	2635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 July 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 16-38 is/are pending in the application.
- 4a) Of the above claim(s) 23-38 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 16-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .  | 6) <input type="checkbox"/> Other: _____                                     |

## **EXAMINER'S RESPONSE**

### **Status of Application**

In response to the applicant's amendment received on 7/8/02. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 16-22 remain unpatentable for the reasons set forth in this office action:

### **Election/Restrictions**

1. Newly submitted claims 23-38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 23-38 are directed to a medical perfusion system classified in class 604. As the applicant has previously stated on page 2 of paper number 10 (response filed 6/9/00) this division is directed to an invention not elected in the parent (now US Pat. 5813972). Claims 23-38, however, are directed to the invention elected (and prosecuted) in the parent application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The applicant argues that claims 23-38 recite "the adapter pod comprising" much like claims 16-22 which are being acted on by the examiner. Because of this, the

applicant believes the restriction requirement should be withdrawn. Regardless of the preamble of claims 23-38, these claims are directed to and provide limitations to a medical profusion device. Claims including limitations to the medical profusion device have been examined in the parent application (5813972). For these reasons, the restriction requirement is made Final.

2. This application contains claims 23-38 drawn to an invention nonelected with traverse in Paper No. 27. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

#### **Claim Rejections - 35 USC § 103**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dais (5524213), Omori (5820414), together or alternatively in combination with Schenk (5444626).

Dais shows a system that can be used as a medical communication system that includes a bus and interface units connected to the bus and also to peripheral units. See col. 1 line 11+. The interface units generate messages in the form of digital data

packets. Dais does not expressly show the interface unit to be within a housing and have different shaped coupling means for coupling to the bus, and the peripheral.

Although Dais does not expressly show the communication system used in a medical perfusion system, it is the examiner's position that medical perfusion systems commonly used communications systems. As an example, Sites shows a medical perfusion system that requires a communication system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above modified communication system to provide communication for a medical perfusion system, as Sites shows a communication system for a medical perfusion system and leaves it up to the artisan to choose an appropriate communication system.

In an analogous art, Omori shows an interface adapter that connects a circuit board 1 to a bus 19a. The interface adapter includes processing elements 16 and 17 and includes connector means which have different shaped couplers as claimed, to provide connection and improvement of the IC card. Omori shows a controller, which provides power to the slave device through the adapter. See col. 7 lines 38+.

The examiner takes note that a profusion device is a well-known medical instrument that would have fallen under the medical application taught by Dais.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized an interface unit in the shape of Omori in the Dais system in order to provide connection and improvement to the peripheral unit of Dais. With regard to the "adapted to" limitation, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires

the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. If such a limitation were given weight, it is submitted that Dais shows the modules 2-5 which communicate to the control unit 1 in addition to other modules. Additionally Schenk (5444626) also shows a communication adapter (pod), which communicates information to other modules in addition to a control unit.

Although Dais does not expressly show the communication system used in a medical perfusion system, it is the examiner's position that medical perfusion systems commonly used communications systems. As an example, Sites shows a medical perfusion system that requires a communication system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above modified communication system to provide communication for a medical perfusion system, as Sites shows a communication system for a medical perfusion system and leaves it up to the artisan to choose an appropriate communication system.

### **Double Patenting**

The double patenting rejection has been withdrawn in view of the applicant's filing of a Terminal Disclaimer.

### ***Response to Arguments***

Applicant's arguments filed 7/8/02 have been fully considered but they are not persuasive.

The applicant argues that the references cited have nothing to do with medical perfusion systems.

Dais shows a system that can be used as a communication system for medical devices that includes a bus and interface units connected to the bus and also to peripheral units. See col. 1 line 11+. The examiner takes note that a profusion device is a well-known medical instrument that would have fallen under the medical application taught by Dais. Furthermore, although Dais does not expressly show the communication system used in a medical perfusion system, it is the examiner's position that medical perfusion systems commonly used communications systems. As an example, Sites shows a medical perfusion system that requires a communication system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used the above modified communication system to provide communication for a medical perfusion system, as Sites shows a communication system for a medical perfusion system and leaves it up to the artisan to choose an appropriate communication system.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 703-305-4796. The examiner can normally be reached on Off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 703-305-4704. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.



Brian A. Zimmerman  
Primary Examiner  
Art Unit 2635

BaZ  
September 4, 2002